

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 19012 of 2000(L)

PETITIONER:

RACHELAMMA MATHEW,
PARTNER,
M/S. K.N.MATHEW & SONS,
GANDHARIAMMANKOVIL ROAD,
THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)

RESPONDENTS:

1. THE DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, THIRUVANANTHAPURAM
(FORMERLY ASST. COMMISSIONER OF INCOME TAX).
2. THE DIRECTOR GENERAL OF INCOME TAX,
INCOME TAX DEPARTMENT,
108, M.G.ROAD, NUNGAMBAKKOM,
CHENNAI.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 23/11/2007, ALONG WITH OP NO. 23913 OF 2000 OP NO. 23914
OF 2000 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP NO. 19012/2000

ORDER ON CMP NO. 31668/2000 IN OP NO. 19012/2000 &
ORDER ON CMP NO. 5537/2003 IN OP NO. 19012/2000.

DISMISSED.

23/11/2007

SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER OF SETTLEMENT COMMISSION DATED 28/03/1997.

P2 : COPY OF THE ORDER DATED 29/07/1997 PASSED by the ASST. COMMISSIONER OF INCOME TAX.

P3 : COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DATED 22/07/1997.

P4 : COPY OF THE APPLICATION FILED BEFORE THE 1ST RESPONDENT.

P5 : COPY OF THE ORDER DATED 5TH SEPTEMBER, 1997 PASSED by the 1ST RESPONDENT.

P6 : COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE 2ND RESPONDENT.

P7 : COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. Nos. 19012, 23913 & 23914 of 2000

Dated, this the 23rd day of November, 2007

J U D G M E N T

I heard learned counsel for the petitioners and learned standing counsel for the Income Tax Department.

2. These original petitions are filed challenging order produced as Ext.P7, in all original petitions, whereunder the Director General of Income Tax, declined to waive interest levied on petitioners under Sections 234B and 234C of the IT Act for the assessment year 1992-93. The assessees were partners of a firm by name M/s.K.N.Mathew Sons. The firm was engaged in distribution of pharmaceuticals. An inspection was carried out by the Department in the business premises of the firm on 19/12/1991 and during search, books of accounts were seized. Pursuant to search, the firm filed settlement application before the Settlement Commission, which allowed the same. The reliefs granted by the Settlement Commission to the Firm included full waiver of interest under Section 234A and part waiver of interest under Section 234B, in as much as the Settlement Commission directed the Department to limit the demand of interest under Section 234B for a period of

two years. So far as liability under Section 234C is concerned, the Settlement Commission directed the Assessing Officer to charge interest in accordance with law. The petitioners did not file application for settlement, but waited for regular assessments. In the assessment order for the assessment year 1992-93, interest was charged on all petitioners under Sections 234 A, B and C of the IT Act. The petitioners claimed same reliefs as granted by the Settlement Commission while granting settlement of firm's assessment, of which they are partners. However, 2nd respondent, though stated that Settlement Commission's order is not applicable as such in the case of assessment of the partners, allowed full waiver of interest charged under Section 234A in the case of all partners, but rejected the waiver applications filed for waiver of interest under the other two sections. It is against these orders, the petitioners filed these original petitions.

3. The learned counsel for the petitioners contended that petitioners have no other income other than the income from the firm, the business premises of which was searched during the relevant year and books of accounts were seized by the Department. Since the only income of the petitioners is

share income from the firm, the order of the Settlement Commission in the assessment of the firm should be followed in the case of the partners is the contention advanced by learned counsel. However, learned standing counsel submits that there is no provision mandating the Department to apply the Settlement Commission's order applicable in the case of the firm, to the case of all the partners. According to him, though interest is mandatory, waiver is considered based on the circular issued by the Board under Section 119(2)(a) of the IT Act and unless conditions are satisfied the assessee is not entitled to waiver of interest. In fact, 2nd respondent has also held that the Settlement Commission's order is not binding on him. So far as waiver of interest is concerned, I am in agreement with this finding of the 2nd respondent because for the purpose of waiver of interest under Sections 234A or 234B or 234C, the conditions stated in the circular should exist. In other words, the assessee has to demonstrate that assessee's case falls fairly under the circumstances stated in the circular. On going through the relevant circular dated 23/05/1996, I find condition for waiver of interest under Section 234A exists and therefore 2nd respondent allowed the same. So far as the conditions

for waiver of interest charged under Section 234B is concerned, during the search the Department should have seized the cash, disabling the assessee from paying the advance tax on due dates and the authority considering waiver application should be satisfied about it. The counsel for the petitioners contended that since the source of income is only share income from the firm, the order of the Settlement Commission in the assessment of the firm should be followed in the case of the partners. I find force in the contention because if cash belonging to the Firm is seized during search or if prohibition was issued by the Department against operation of Bank account, then the firm and the partners would have been disabled from paying advance tax. However, the waiver applications or the orders issued thereon, which are challenged in these original petitions, do not disclose whether cash was seized or whether there was any restriction against withdrawal from Bank accounts of the Firm. In the absence of any of these facts, the satisfaction of the conditions referred to in the circular for waiver of interest cannot be verified. If cash was not seized and there was no prohibition against withdrawal from the Bank account by the partners, then the impugned orders have to be upheld. However, learned counsel for

the petitioners submits that the seized records do not disclose this matter. I feel, an opportunity can be given to the petitioners to bring to the notice of the 2nd respondent and ask for modification of his order in rectification proceedings that there was seizure of cash or prohibition against operation of Bank account, disabling the assesseees from paying advance tax. Accordingly, these original petitions are disposed of upholding Ext.P7, but leaving freedom to the petitioners to file Rectification Application, if facts stated above exist. However, since there will be delay in filing of applications for rectification on account of pendency of these original petitions, there will be direction to the 2nd respondent to consider the Rectification Applications on merits, if Applications are filed along with copy of this judgment within one month from the date of receipt of a copy of this judgment by petitioners.

(C.N.RAMACHANDRAN NAIR, JUDGE.)